

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 895 of 1997

in

SPECIAL CIVIL APPLICATION No 7631 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DASHRATHBHAI N PANDYA

Appearance:

MR YOGESH S LAKHANI for Appellant
MR MAHENDRA K PATEL for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 21/04/99

ORAL JUDGEMENT (per C.K. Thakkar, J)

This appeal is filed against the judgement and order passed in Special Civil Application No. 7631 of

1997 by the learned single Judge on June 24, 1997. The respondent was working as watchman (off duty reliever) at Palanpur depot in Gujarat State Road Transport Corporation at Palanpur Division. From Palanpur, he was transferred to Tharad by the Corporation. In view of the fact that a reference was pending, it was obligatory on the part of the authorities to get prior permission. When the proceedings were initiated, a complaint was made and interim order was passed by the Industrial Tribunal on 13.8.1996 below Exh. 2 in complaint (IT) 82 of 1996 in Reference No. (IT) 323 of 1994 in which the following direction was issued;

"The application is allowed. The opponent is hereby directed to give the work to the complainant at Palanpur on his original place of work.

The opponent is hereby restrained by this injunction against him from further implementation of the alleged order dated 5.7.1996 of transfer till the disposal of the main complaint Ex. 1. Further hearing of the complaint is kept on 26th September, 1996.

No order as to costs."

Since the Corporation was of the opinion that action of transferring the petitioner from Palanpur to Tharad ought not to have been interfered with by the Tribunal and the order below Exh. 2 ought not to have been passed by it, it approached this court by filing the above Special Civil Application. It is stated in the judgement that before the Industrial Tribunal passed the order, transfer was already effected by the Corporation and hence no order of mandatory nature during the pending of complaint could have been passed by the Tribunal. It appears that the petition was admitted by issuing rule and interim relief was also granted.

When the matter came for final hearing a statement was made on behalf of the workman that he was prepared to proceed to Tharad. However, it was submitted that during the intervening period during which the order passed by the Tribunal was not implemented, he may be paid backwages. On the other hand it was the say of the Corporation that as the order could not have been passed by the Tribunal which was of a mandatory nature as it was already implemented and further that the order was stayed by this court, he was not entitled to backwages. The learned single Judge however partly allowed the petition

in view of the fact that the workman was willing to proceed to Tharad but he directed that for the intervening period salary should be paid to the workman. The learned single Judge then observed as under:-

"In the facts and circumstances of this case, I find it appropriate just and proper to direct that the order dated 13.8.1996 passed by the Industrial Tribunal shall cease to operate hence forth for the purpose of respondent's joining at Tharad and finally from the date the respondent is paid the due amount of wages for the period for which he has not been paid after 4.7.1996. Mr. Lakhani submits that three weeks time may be granted for the purpose of making the payment and accordingly three weeks time is granted from today. The respondent is granted time to join at Tharad and he may join at Tharad on or before 1.7.1997. Should the respondent join at Tharad and the payment, as aforesaid, is made to him by the present petitioner, the order dated 13.8.1996 passed by the Industrial Tribunal shall cease to operate with the date of the respondent joins at Tharad. Mr. Lakhani appearing for the Corporation has submitted that the Tribunal may be directed to decide the main complaint within three months period from the date the certified copy of this order is produced before the Industrial Tribunal. Order accordingly."

A statement was made at the bar by the learned counsel for the workman that accordingly the workman has joined at Tharad.

On behalf of the appellant, it was contended that when the order passed by the Tribunal was illegal, the workman was not entitled to wages during the intervening period. It was also submitted that when the learned single Judge has granted interim relief, it was incumbent upon the workman to work at Tharad and since he did not join duty at Tharad, he was not entitled to wages during that intervening period. Moreover, the doctrine that "no work, no pay" would also come into operation.

On behalf of respondent, it was submitted that looking to the order it is clear that the Corporation had agreed to pay the amount. In light of the said fact the learned single Judge partly allowed the petition and the order passed by the Tribunal was set aside and the workman was directed to remain present at Tharad. Though on behalf of the Corporation it was submitted that time

was sought in view of the fact that it was a conditional order the fact remains that time was sought by the Corporation and time was granted by the learned single Judge. The matter had come before this court at interlocutory stage. It was submitted that the proceedings which were pending and also now over in favour of the workman. We, however, express no opinion on that aspect.

In our opinion in the peculiar facts and circumstances of the case, the order passed by the learned single Judge directing the Corporation to pay wages for the intervening period does not require any interference. The LPA is required to be dismissed and accordingly it is dismissed. The wages will be paid by the Corporation as expeditiously as possible preferably within six weeks from the receipt of the writ. Notice discharged. No order as to costs.

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